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Transmitted herewith for filing in the application of:

APPLICANT:	Kinney, Joseph)	ART UNIT:	2841
)		
APPLICATION #:	09/550,983)	EXAMINER:	Goodwin, Jeanne
)		
FILED:	4/17/2000)		

FOR: WRISTWATCH GUARD WITH ACCESS FLAP

Enclosed is:

1. An Appeal Brief, in triplicate; and
2. A Brief Fee.

Respectfully submitted this 2ND day of APRIL, 2004.

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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

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JOHN WILEY HORTON



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APPEAL BRIEF OF PETITIONER

Pursuant to 37 CFR § 1.192(a), the petitioner, JOSEPH KINNEY, hereby serves his

Appeal Brief.

I. STATEMENT OF REAL PARTY IN INTEREST

The Applicant in this matter is Joseph Chadwick Kinney. There is no other party in interest.

II. STATEMENT AS TO RELATED APPEALS AND INTERFERENCES

To the knowledge of the Applicant, there are presently no related appeals or interferences.

III. STATEMENT AS TO THE STATUS OF THE CLAIMS

Claims 1 - 4 of the pending application are under final rejection. The decision as to each and every claim is being appealed.

IV. STATEMENT AS TO AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

No amendments have been filed subsequent to final rejection.

V. SUMMARY OF THE INVENTION

The invention is a wristwatch guard with a protector flap and an integral pocket. FIGs. 1 and 4 of the original disclosure show the invention and how it is used. A circular guard band 12 is provided with an adjustment break 50. The adjustment break is typically closed by mating VELCRO patches.

The guard band is made of neoprene or similar pliable material. Upper portion 52 of the circular band includes an "I" shaped opening which allows the watch body to be passed through circular guard band 12. The watch body is pushed through body cutout 14 (from underneath in the view shown in FIG. 1). The watch band then passes through the two band cutouts 24. FIG. 4 shows wristwatch 46 with wristwatch guard 10 in position. The guard can be installed without removing the watch from the user's wrist. The user simply presses body cutout 14 over the watch, then wraps the band over watch band 46 and closes adjustment break 50 to hold the guard in place. The guard can likewise be removed without removing the watch. To remove the device, the user opens the adjustment break and tugs the guard free (The pliable material allows the body and band cutouts to pass over the watch).

A cover flap 16 is provided to close over and protect the face of the watch. A storage pocket 30 is provided (see FIG. 2) for secure storage of small items such as jet ski keys.

VI. ISSUES PRESENTED FOR REVIEW

1. Whether claims 1 and 2 are anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 5,332,135 to Fletcher.
2. Whether claims 3 and 4 are obvious under 35 U.S.C. §103(a) by U.S. Patent No. 5,332,135 to Fletcher in view of U.S. Patent No. 5,636,775 to Kartsois.

VII. FACTS OF THE CASE

The Petitioner/Applicant originally filed the above-described application on April 17, 2000. A first Office Action was mailed on August 27, 2001. Claims 1,2, and 5-7 were rejected. Claims 3 and 4 were objected to as being dependent on a rejected claim.

The Petitioner/Applicant responded on November 27, 2001, amending claims 1-7. On April 1, 2002, a second Office Action was mailed. Claims 1-4 were indicated as allowed. Claims 5-7 were rejected. This second Office Action was made final.

On July 1, 2003, the Petitioner/Applicant filed a response deleting the rejected claims (5-7), on the belief that the application would then be in condition for allowance.

On February 6, 2003 a third Office Action was mailed. This action rejected claims 1-2 as anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 5,332,135 to Fletcher. Claims 3 and 4 were rejected under 35 U.S.C. §103(a) by U.S. Patent No. 5,332,135 to Fletcher in view of U.S. Patent No. 5,636,775 to Kartsois. The Examiner set forth her reasoning in a detailed analysis. The Examiner also withdrew the final status of the prior Office Action.

On May 6, 2003, the Petitioner/Applicant further refined the claims in order to set forth the present invention's unique method of attaching to the wristwatch (the "I" shaped cutout which allows the guard to be pressed onto the wristwatch without having to remove the wristwatch or manipulate latches, etc.).

On September 8, 2003, a fourth Office Action was mailed. This action finally rejected all the claims under the same reasoning set forth in the third Office Action. On February 6, 2004, the Petitioner/Applicant filed a Notice of Appeal, along with a petition for a TWO MONTH extension and the appropriate fees.

VIII. ARGUMENT

A. Claims 1 and 2 are not anticipated under 35 U.S.C. §102(b) by U.S. Patent No. 5,332,135 to Fletcher.

This question turns on the analysis of claim 1, since claim 2's addition of a cover flap is not independently patentable (cover flaps being present in the prior art). In order for a section 102(b) reference to be valid as prior art, every element and limitation of the claimed present invention - as literally defined in the claims - must be disclosed within the piece of prior art. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed.Cir. 1985); *Atlas Powder Company v. du Pont*, 750 F.2d 1569 (Fed.Cir. 1984); *American Hospital Supply v. Travenol Labs*, 745 F.2d 1 (Fed.Cir. 1984). The Applicant respectfully submits that this requirement has not been met under the present facts, and that the section 102(b) rejection is therefore improper.

Fletcher's FIG. 1 fully encompasses the disclosure of that invention. It shows a circular band having an adjustment break. The band has a "middle belt portion 32" which includes a "length of material 34." The "length of material 34" slides under the watch body during installation. It is then rejoined to the rest of the band by affixing "loop component 20B" to mating VELCRO surfaces on the circular band and on "length of material 34." Thus, Fletcher employs two slots which open on one edge of the circular band. These two slots allow the passage of the watch band so that the circular band can slide laterally into place (Assuming the watch is in position on the user's wrist, the Fletcher band is installed by sliding up or down the long axis of the user's wrist). Fletcher discloses no body cutout of any type.

Summarizing, Fletcher uses two slots which intersect the edge of the circular band. The watch band is passed through these two slots until the watch body lies atop the circular band.

The intersection of the two slots with the band's edge must then be closed via a separate fastener ("loop component 20B" in FIG. 1).

FIG. 1 of the present invention shows substantial differences from the approach taken by Fletcher. Two slots are present ("band cutouts 24"). These do not, however, intersect the edge of the circular band. Rather, they are joined together by "body cutout 14" to form an "I" shaped opening. The present invention cannot slide laterally into place on the watch. It must be pressed down from above. "Body cutout 14" deflects over the watch body, with the watch band coming to rest in the two "band cutouts 24." The "I" shape can be seen as including two "flaps." These "flaps" flip under the watch body to secure the device in position. FIG. 4 shows the circular band installed on the wristwatch.

All these differences are explicitly set forth in claim 1 of the present invention. The relevant language is as follows:

... b. wherein said upper portion opens into a body cutout passing completely therethrough, having a first end and a second end, with said body cutout being oriented transverse to the central axis of said wrist of said user, and being large enough to allow the passage of said watch body therethrough so that said watch body rests on said outer surface when said wristwatch guard is installed on said wristwatch;

c. wherein said upper portion opens into a first band cutout passing completely therethrough, being positioned near said first end of said body cutout, and being oriented parallel to said central axis of said wrist of said user, and being large enough to allow the passage of said watch band therethrough;

d. wherein said upper portion opens into a second band cutout passing completely therethrough, being positioned near said second end of said body cutout, and being oriented parallel to said central axis of said wrist of said user, and being large enough to allow the passage of said watch band therethrough, so that said watchband encircles said user's wrist inside of said inner surface of said circular band, yet remains attached to said watch body resting on said outer surface of said circular band; and

e. wherein said body cutout, said first band cutout, and said second band cutout lie entirely within said circular band.

Of course, the language employed in the claim is to be understood in the context of the accompanying specification. *Cutlor Corp. v. A.E. Stanley Mfg. Co.*, 224 F.3d 1328, 1332 (Fed. Cir. 2000). The specification clearly demonstrates that the phrase "...wherein said body cutout, said first band cutout, and said second band cutout lie entirely within said circular band...", means that none of the three "cutouts" intersect an edge of the circular band. Other differences are notable as well. These are:

1. Fletcher includes no "body cutout" at all;
2. Assuming arguendo that the two slots and "length of material 34" can be considered a form of "body cutout," they are not "oriented transverse to the central axis of said wrist of said user" as required by the present invention; and
3. The present invention clearly specifies the use of three intersecting slots to form an "I" shape (elements b, c, and d).

The fact that the three "cutouts" lie "entirely within said circular band" makes the present invention quite different from Fletcher. This limitation also dictates a functionally different operation for the two inventions. Fletcher slides into place with a secondary closure operation. The present invention presses down into place with no secondary closure operation.

It cannot be said that every element and limitation of the claimed present invention - as literally defined in the claims - is disclosed within Fletcher. Thus, the Applicant/Petitioner respectfully submits that the rejection of claims 1 and 2 on the basis of §102(b) is improper.

B. The claims are not rendered obvious under 35 U.S.C. §103(a) by U.S. Patent No. 5,332,135 to Fletcher in view of U.S. Patent No. 5,636,775 to Kartsois.

Claims 3 and 4 were rejected under 35 U.S.C. §103(a) on the basis of Fletcher in view of

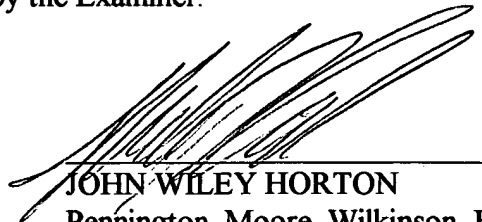
Kartsotis. Kartsotis discloses a watch band having an attached pocket with a covering flap (see Kartsotis FIG. 1).

It is the Applicant/Petitioner's view that the arguments presented above overcome the section 102 rejections with respect to claims 1 and 2, and that the section 103 rejections with respect to claims 3 and 4 (dependent claims) are thereby rendered moot. However, since a section 103 argument as to claims 1 and 2 could potentially be raised, that issue will briefly be discussed:

A combination of prior art references does not create a case of prima facie obviousness if they fail to disclose a material element or limitation claimed in the present invention. *In re Evanega*, 829 F.2d 1110 (Fed. Cir. 1987). The "T" shaped band cutout/body cutout design set forth and claimed in the present invention is not suggested by Fletcher, Kartsotis, or any other piece of prior art known to the Applicant. Thus, claims 1 and 2 are both novel and non-obvious. Claims 3 and 4, being dependent on claim 1, are therefore also novel and non-obvious.

In view of the prior arguments and citations of authority, the Applicant believes the claims are in condition for allowance.

WHEREFORE, the Applicant hereby requests that the Board of Patent Appeals and Interferences reverse the rejections previously entered by the Examiner.



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APPENDIX CONTAINING A COPY OF THE APPEALED CLAIMS

1. A wristwatch guard for protecting a wristwatch, comprised of a watch body and a watch band, worn on a user's wrist, comprising:
 - a. a circular band of elastomeric material, forming an inner surface and an outer surface with said inner surface being proximate said user's wrist and said outer surface being distal to said user's wrist, having an upper portion and a lower portion, wherein said lower portion is transected by an adjustment break which allows the diameter of said circular band to be adjusted to accommodate variation in the diameter of said wrist of said user;
 - b. wherein said upper portion opens into a body cutout passing completely therethrough, having a first end and a second end, with said body cutout being oriented transverse to the central axis of said wrist of said user, and being large enough to allow the passage of said watch body therethrough so that said watch body rests on said outer surface when said wristwatch guard is installed on said wristwatch;
 - c. wherein said upper portion opens into a first band cutout passing completely therethrough, being positioned near said first end of said body cutout, and being oriented parallel to said central axis of said wrist of said user, and being large enough to allow the passage of said watch band therethrough;
 - d. wherein said upper portion opens into a second band cutout passing completely therethrough, being positioned near said second end of said body cutout, and being oriented parallel to said central axis of said wrist of said user, and being large enough to allow the passage of said watch band therethrough, so that said

watchband encircles said user's wrist inside of said inner surface of said circular band, yet remains attached to said watch body resting on said outer surface of said circular band and;

- e. wherein said body cutout, said first band cutout, and said second band cutout lie entirely within said circular band.
-
- 2. The device as recited in claim 1, wherein said upper portion further comprises a cover flap, attached to said circular band, and positioned to close over said upper portion so that said watch body is sandwiched between said outer surface and said cover flap, thereby protecting said wristwatch.
-
- 3. The device as recited in claim 1, wherein said lower portion further comprises a storage pocket having a pocket opening for the insertion and storage of small items, and wherein said pocket opening is located on said outer surface of said circular band .

4. The device as recited in claim 3, wherein said pocket opening is covered by a pocket flap, with said pocket flap having an open position in which said items may be installed or removed from said pocket, and a closed position in which said items are securely retained within said pocket.

4. The device as recited in claim 3, wherein said pocket opening is covered by a pocket flap, with said pocket flap having an open position in which said items may be installed or removed from said pocket, and a closed position in which said items are securely retained within said pocket.